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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,463	10/20/2003	Hans Michael Ockenfels	01840.0001-US-01	4148

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EXAMINER	
SHAY, DAVID M	

ART UNIT	PAPER NUMBER
3735	

MAIL DATE	DELIVERY MODE
09/08/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/689,463	OCKENFELS, HANS MICHAEL	
	Examiner	Art Unit	
	david shay	3735	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *June 24, 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-8,10,11,14 and 48-52* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-8,10,11,14 and 48-52* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 9, 2007 has been entered.

Applicant argues that Anderson et al does not vary the UV radiation dose in different affected areas dependent on the epidermal thickness of the skin in the affected areas. The examiner must respectfully disagree. Applicant's assertion appears to be rooted in defining the treatment as ending once a further diagnosis of the tissue is made, even though this occurs during a single session, or visit to the physician. The examiner has reviewed the originally filed disclosure, and has been unable to find any support therein for this limited definition of the term "treatment". Thus applicant's arguments are not convincing. Further, even if support for such an interpretation of the term were present, the portion of the Anderson et al disclosure immediately succeeding that cite in applicant's arguments clearly states that "the computer can vary the therapeutic dose for each treatment area...according to the differences of the diagnostic ratios. And, as can be readily seem from the disclosure at column 8, lines 22-43, the diagnostic ratio correlates with epidermal thickness. It is also asserted that further diagnosis of the tissue "makes no sense" however, as already stated in the previous office action, it is the provision of only incomplete treatment which makes no sense. Anderson et al acknowledges the existence of areas which exhibit different levels of normalized radiation indicating the severity of the condition and a means for providing full treatment of such areas, as set forth above. It is also clear that the tryptophan absorbs the applied diagnostic radiation, which causes it to fluoresce. Clearly the

treatment radiation (which is of the same wavelength, but much greater intensity) destroys the tryptophan, which would be reflected in a reduced fluorescence for that area. Applicant has provided no theory or evidence that demonstrates the persistence of tryptophan subsequent the application of high intensity radiation, thus applicant's theory regarding the lack of change of fluorescence is noted, but is not persuasive. Thus applicant's arguments are not convincing.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 2, 4-7, 11, 14, and 48-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson et al in combination with Chernoff, Sator et al and Neigut. Anderson et al teaches treatment of psoriasis wherein the skin is tested, e.g. by determining skin thickness to determine psoriatic areas and the areas are exposed to treatment radiation, preferably so as not to cause blister formation, wherein the fluorescence generated by the treatment pulse is used to determine whether or not an additional treatment pulse should be directed to the plaque (see column 15, lines 37-48). Chernoff teaches a device and method for treating the skin wherein the skin depth is determined at each point of treatment and the treatment laser power is adjusted for the depth at each point. Sator et al teach that PUVA treated skin experiences accelerated thinning, which is correlated with the PUVA compared to the skin of people who have not undergone PUVA and that ultrasound is a sensitive and non-invasive method for determining skin thickness. Neigut teaches that psoriatic plaques reduce with treatment (see column 13, lines 14-34). It would have been obvious to the artisan or ordinary skill to use ultrasound to measure the skin thickness of patients in the method of Anderson et al, since this is a sensitive and non-invasive measure, as taught by Sato et al, and to employ the laser-ultrasound

cooperation steps of Chernoff in the method, since this would enable the dosages to be minimized for each patient by preventing the dosing of unaffected skin, and to vary the dosage with each treatment, since treatments reduce the plaques, thus reducing the required dosage to treat them under the regimen of Anderson et al, thus producing a device and method such as claimed.

Claims 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson et al in combination with Chernoff, Sator et al, and Neigut as applied to claims 1, 2, 4-7, 11, 14, and 48-52 above, and further in combination with Mueller et al. Mueller et al teach the incorporation of a laser and ultrasound applicator in a single instrument. It would have been obvious to the artisan of ordinary skill to provide the laser and ultrasound applicator in the combined method of Anderson et al in combination with Chernoff and Sator et al, since the separated ultrasound and laser applicators and combined applicators are equivalents, as shown by Mueller et al, or, alternatively, to employ the combined method of Anderson et al in combination with Chernoff and Sator et al in the method of Mueller et al, since Mueller et al discuss no therapy for any particular condition and in either case, to employ a mirror arm to conduct the radiation, since this is equivalent to the use of fiber optics and can more efficiently transmit ultraviolet light, official notice of which is hereby taken, thus producing a device such as claimed.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson et al in combination with Chernoff, Sator et al, and Neigut as applied to claims 1, 2, 4-7, 11, and 14 above, and further in combination with Bonis et al. Bonis et al teach increasing the dosage of UV light in psoriasis plaques that do not respond to a base level of therapy, and continuing the

increase until a response is seen. It would have been obvious to the artisan of ordinary skill to employ the dosage increase technique of Bonis et al in the combined method of Anderson et al in combination with Chernoff and Sator et al, since this yields better results, as taught by Bonis et al, thus producing a method and device such as claimed.

Applicant's arguments filed June 24, 2008 have been fully considered but they are not persuasive. The arguments are not persuasive for the reasons set forth above.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to david shay whose telephone number is (571) 272-4773. The examiner can normally be reached on Tuesday through Friday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II, can be reached on Monday, Tuesday, Wednesday, Thursday, and

Friday. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/david shay/

Primary Examiner, Art Unit 3735